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ABSTRACT

A study was conducted to determine the extent and level of employment of minorities and women as sworn personnel in the Kentucky Bureau of State Police. Data was collected by means of personal interviews with Bureau officials, troopers, police personnel board members, and representatives of civic and nonprofit organizations as well as from Bureau employment records. It was found that (1) women have never been employed on the Bureau's sworn force; (2) minorities are seriously underrepresented, occupying only 2.2 percent of the force positions in 1977; (3) the Bureau has not demonstrated a commitment to equal employment opportunity; (4) as shown in its eligibility requirements that consist in part of job-unrelated selection procedures (physical specifications, veterans preference, a subjective background check, and personnel board approval), the Bureau has not adopted affirmative action policies; (5) significant future gains appear unlikely; and (6) action through federal judicial process is necessary to remedy the situation, and the suspension of funding from the Law Enforcement Assistance Administration is the first step in such action. (A reply from the Bureau commissioner is also included, refuting the study's findings.) (ELG)

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A Paper Commitment: Equal Employment Opportunity in the Kentucky Bureau of State Police

—A report prepared by the Kentucky Advisory Committee to the U.S. Commission on Civil Rights

- ED158033

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LETTER OF TRANSMITTAL

Kentucky Advisory Committee
to the U.S. Commission on Civil Rights
July 1978

MEMBERS OF THE COMMISSION
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Sirs and Madam:

The Kentucky Advisory Committee submits this report on the employment of minorities and women within the Kentucky Bureau of State Police as part of its responsibility to advise the Commission about civil rights problems within this State.

The study that resulted in this report showed that there is not and never has been a woman employed on the sworn force of the Kentucky Bureau of State Police. Minorities are not represented in numbers even remotely approaching their percentage in the labor force. In April 1977, the bureau employed 948 sworn officers; 21 (or 2.2 percent) were minority men. Almost 7 percent of the State's labor force is made up of minority persons and over 37 percent is female.

Even more disturbing, however, than the employment statistics is the lack of demonstrated commitment on the part of bureau officials to overcome the historical exclusion of women and minorities from the sworn force. Despite the fact that the Governor of Kentucky, the Kentucky Department of Justice, and the U.S. Law Enforcement Assistance Administration all require that the bureau develop a bona fide affirmative action plan, the bureau's "plan" is little more than a paper commitment to equal employment opportunity. It does not include an analysis of current employment practices or specific steps for achieving equal employment opportunity. In 1974–75 the bureau hired 135 new troopers. Only 12 were black; none were women. Despite compelling justification, the bureau has steadfastly refused to adopt goals and timetables for obtaining meaningful representation of minorities and women among the sworn personnel of the bureau.

In July 1977, the Kentucky Commission on Human Rights ruled that the height requirement imposed by the bureau discriminates against women. The bureau is appealing that decision. Based on the Kentucky commission's ruling, however, the Law Enforcement Assistance Administration suspended all LEAA funds to the bureau.

It is in view of these and other extraordinary conditions that the Advisory Committee submits but one recommendation with this report: that the U.S. Commission on Civil Rights urge the United States Attorney General to invoke the full power of the law to attain equal employment opportunity on the sworn force of the Kentucky Bureau of State Police for minorities and women.

Respectfully,

Marguerite Harris,
Chairperson

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The Kentucky Advisory Committee wishes to thank the staff of the Commission's Southern Regional Office in Atlanta for coordinating the study of and preparing this report on equal employment opportunity within the Kentucky Bureau of State Police.

The study was the principal staff assignment of Edith Hammond, equal opportunity specialist; assistance was provided by Mark Schneider, regional attorney. The report was co-authored by Ms. Hammond and Mr. Schneider with contributions from Katie Harris, researcher/writer. Portia Raby and Joan Harper provided support throughout the study. All worked under the supervison of Bobby Doctor, Regional Director of the Southern Regional Office.

The staff of the Publications Support Center, Office of Management, was responsible for final production of the report.

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Chapter 1

Introduction

The Kentucky Advisory Committee to the U.S. Commission on Civil Rights decided in September 1976 to investigate the practices of the Kentucky Bureau of State Police with regard to the hiring and promotion of minorities and women.

In preparation for this investigative study, a subcommittee of the Advisory Committee was formed. Chairperson Marguerite Harris, Vice Chairperson James Rosenblum, Secretary A. Lee Coleman, and Darryl T. Owens were members. The subcommittee and staff of the Southern Regional Office of the U.S. Commission on Civil Rights collected information through personal interviews with officials of the Kentucky Bureau of State Police, including police personnel board members, police troopers, and representatives of civic and nonprofit organizations. The bureau, unless otherwise indicated, furnished the police employment data used in this report. The report focuses on the extent and level of employment of minorities and women as sworn personnel in the Kentucky Bureau of State Police.

Chapter 2

Status of Women and Minorities in Kentucky

The general treatment of minorities and women in the State of Kentucky appears to be ambiguous. While progressive laws have been passed by the legislature to assure nondiscrimination, women and minorities rank low in income, and discrimination and violence against blacks have by no means disappeared from the State.

In 1966 the legislature established the Kentucky Commission on Human Rights and gave it the power to enforce nondiscrimination in employment and public accommodations. Nondiscrimination in housing was added to the commission's responsibilities with the passage of the Fair Housing Act of 1968. Kentucky was the first Border or Southern State to establish such a State-supported agency, and it still serves as a model for other States. The legislature ratified the Equal Rights Amendment in 1972 and it is still one of only two States in the Southeast to do so.

Yet the violence exhibited during 1975 and 1976 when the Louisville-Jefferson County school system was desegregated gives credence to the belief of some people that racism is not dead in Kentucky.[1]

Among the State's 3.2 million residents, 7 percent are black and over 50 percent are women. Approximately 11,100 persons of Spanish heritage live in the State, as do approximately 1,300 Native Americans.[2] Forty percent of the State's black residents live below the poverty level, compared to only 22 percent of the white residents. As is true throughout the country, the minority woman, who is often a single head of household, ranks at the bottom of the pay scale. For persons over 14 years old, the median annual income of white males is $5,074; of white females, $1,928; of black males, $3,348; and of black females, $1,617.[3]

Over 37 percent of the Kentucky labor force is female and almost 7 percent is minority (6.8 percent). Approximately 44 percent of the labor force, therefore, is minority and female.[4]

As in most States, the State government itself is a major employer. In general, employment in the State government offers good opportunities in a number of cities and counties in any State. Kentucky is no exception. The Kentucky Advisory Committee believes that the State government should serve as an example to other employers in the State with regard to equal opportunity for all people.

Statistics (as of December 1974) on employees of the State government caused the Advisory Committee to raise questions about the example being set by the State. Minorities and women are found at the bottom of the pay scale. While women are employed to a greater percentage than their representation in the State labor force, blacks are underrepresented. Women compose 40 percent of the State's employees; blacks, 5.5 percent. Blacks earn an average of 21.4 percent less than white State employees. Women in general earn 17 percent less than male State employees.[5]

Notes to Chapter 2

1. U.S., Commission on Civil Rights, *Fulfilling the Letter and Spirit of the Law* (1976), p. 44.

2. U.S., Department of Commerce, Bureau of the Census, *General Population Characteristics, Kentucky*, 1970 Census of Population, no. PC(1) B19, pp. 55–56.

3. U.S., Department of Commerce, Bureau of the Census, *Detailed Characteristics, Kentucky*, 1970 Census of Population, no. PC(1) D19, p. 887.

4. Commonwealth of Kentucky, Department for Human Resources, *Total and Nonwhite Population and Labor Force Data in Kentucky by County* (1975), p. 1.

5. Commonwealth of Kentucky, Commission on Human Rights, "Black Employment in Kentucky State Agencies" (no date), pp. 1–2.

Chapter 3

The Kentucky Bureau of State Police

Organization

The Kentucky Department of Justice was created by executive order of the Governor in September 1973 and confirmed by the General Assembly in 1974. The secretary of justice is head of the department, which has three bureaus, including the bureau of State police which serves as the law enforcement agent of the State.

Bureau personnel include both officers and civilians. Officers are Kentucky Bureau of State Police employees who are commissioned and possess the powers of a peace officer. Civilian employees—e.g., statisticians, clerks, and other assistants—do not possess the powers of a peace officer.

The commanding officer of the Kentucky Bureau of State Police is Commissioner Kenneth E. Brandenburg. The commissioner, according to State statute, has the power to "appoint or promote to the ranks, grades and positions of the bureau such officers as are considered by him to be necessary for the efficient administration of the bureau."[1] The same statute calls for the creation of a State police personnel board consisting of the commissioner and four other members appointed by the Governor.[2] The board elects its own chairperson and meets at the discretion of the commissioner. At present the five-member board includes one black man and no women.

The board makes rules and regulations to carry out the purposes of the bureau and provides for:

> (7) ***
>
> (a) Open competitive examination as to fitness of applicants for employment as officers;
>
> (b) Establishment of eligible lists as a result of such competitive examinations, from which lists vacancies shall be filled.[3]

Employment Statistics

As of April 1, 1977, the bureau of State police employed 448 sworn personnel. Over 97.8 percent or 927 were white men. Twenty-one or 2.2 percent of the sworn force were minority males (19 black, 2 Spanish surname). Exhibit 1 clearly shows that the minority persons who are employed as commissioned officers rank at the bottom of the bureau's chain of command: none ranks higher than trooper.[4]

Exhibit 2 illustrates the employment patterns of the bureau of State police since 1972. The first black trooper was not hired until 1974. From 1972 through 1976, the size of the sworn force increased from 676 to 948; nearly half of the increase occurred in 1974–75 when 135 additional troopers were hired. Despite the fact that this 40 percent increase in sworn personnel afforded an excellent opportunity to overcome the historical exclusion of blacks and women from the force, only 19 of the 272 new hires were black. None were women.

Qualifications for Officers

Kentucky State law sets some specific qualifications for persons who wish to become State police officers: they must be U.S. citizens, residents of Kentucky "of good moral character and in good health," and between the ages of 21 and 30, with a high school diploma or its equivalent. The statute provides considerable latitude for the commissioner to require examinations that will determine if a candidate qualifies. It reads in part:

> (3) The Commissioner shall prescribe minimum physical requirements...and shall conduct such tests and require such physical examinations as deemed necessary to determine the fitness and qualifications of each applicant....[5]

"All other qualifications being equal," preference for veterans of the United States, "in time of war, who were honorably discharged" is also specified by the State law.[6]

The actual process of becoming a State police officer, as determined by the Advisory Committee during this study, is as follows. Candidates submit a completed application form, a certified copy of

EXHIBIT 1

Sworn Personnel, Kentucky Bureau of State Police, April 1, 1977

Officer rank	White		Black		Spanish		Other		Total	
	M	F	M	F	M	F	M	F	M	F
Commissioner	1	0	0	0	0	0	0	0	1	0
Deputy commissioner	1	0	0	0	0	0	0	0	1	0
State police lieutenant colonel	3	0	0	0	0	0	0	0	1	0
Police major	6	0	0	0	0	0	0	0	6	0
Police captain	32	0	0	0	0	0	0	0	32	0
Police lieutenant	44	0	0	0	0	0	0	0	44	0
Police sergeant	103	0	0	0	0	0	0	0	103	0
Senior police trooper	416	0	0	0	0	0	0	0	416	0
Police trooper	293	0	19	0	2	0	0	0	314	0
Police trooper cadet	6	0	0	0	0	0	0	0	6	0
Executive security officer I	13	0	0	0	0	0	0	0	13	0
officer II	3	0	0	0	0	0	0	0	3	0
officer III	3	0	0	0	0	0	0	0	3	0
officer IV	1	0	0	0	0	0	0	0	1	0
Executive security officer trainee	2	0	0	0	0	0	0	0	2	0
Total	927	0	19	0	2	0	0	0	948	0

Source: Kentucky Bureau of State Police, computer printout, Apr. 1, 1977.

(USCCR—Kentucky SAC)

EXHIBIT 2

Sworn Personnel, Kentucky Bureau of State Police, 1972–76

Officer rank	1972		1973		1974		1975		1976	
	W	B	W	B	W	B	W	B	W	B
Lieutenant colonel	1	0	2	0	2	0	3	0	3	0
Police major	3	0	5	0	5	0	5	0	5	0
Police captain	29	0	32	0	34	0	35	0	34	0
Police lieutenant	39	0	42	0	46	0	45	0	45	0
Police sergeant	93	0	103	0	103	0	102	0	102	0
Senior police trooper	0	0	128	0	230	0	313	0	374	0
Police trooper	458	0	355	0	314	6	385	10	360	19
Trooper cadet	53	0	44	0	51	1	27	2	6	0
Totals	676	0	711	0	785	7	915	12	929	19

Source: Complaint Exhibit No. 3, Pearson v. Department of Justice, Complaint Nos. 584–E, 662–E (Administrative decision, Kentucky Commission on Human Rights) (1977).

(USCCR—Kentucky SAC)

EXHIBIT 3

Expenditure of LEAA Funds, Kentucky Bureau of State Police, 1975 and 1976

Categories in which LEAA grants spent	1975	1976
Criminal justice information		
Uniform crime report	$ 94,230	$ 84,807
LINK	427,140	384,426
State criminalistics		
Central lab	38,070	46,662
Regional lab	175,500	225,000
Evidence collection	84,800	0
Increase investigation resources		
Criminal investigation	203,754	183,700
Organized crime		52,326
Criminal justice training	33,300	27,474
Total $ spent	1,056,794	1,004,403

Source: Kentucky Bureau of State Police, "Federal Programs, February 8, 1977."

(USCCR—Kentucky SAC)

their birth certificate, and high school and/or college transcripts (this includes information about grades and course credits) or a high school equivalency certificate. Veterans include a separation from military service form. After this information is submitted, the candidate is scheduled to take a written examination. In addition each applicant is interviewed by a State police officer. The interview is designed to judge the attitude, stability, and mental fitness of a candidate. The State police officer records his findings and impressions and submits the completed interview form, which is presented to the personnel board.

Kentucky Bureau of State Police personnel conduct an extensive background investigation (credit, driving, arrest, employment records, and character references) of the candidates who pass the written exam. Finally, the entire application file (including all information listed above) of every candidate is submitted to the State police personnel board for action—either approval, deferral for personal interview, or rejection.[7] Applicants approved by the personnel board are scheduled to take a medical examination prior to employment.[8]

According to bureau equal employment opportunity coordinator Lt. Col. David Finch, all selection criteria for employment as a trooper are measured on a pass-fail basis without regard to rank or performance on any individual selection criterion. If the candidate is approved by the personnel board, he or she is placed on an employment register with priority for employment determined solely by the date of the candidate's application for employment.[9]

The single exception to this process, and one that has had a debilitating effect on female eligibility for employment, is that all eligible veterans are automatically given preference over all nonveterans (see discussion below in this chapter).

Lt. Col. Finch stated that a primary reason for adoption of the pass-fail procedure in lieu of ranking by individual performance was to facilitate placement of minority candidates. In addition, Lt. Col. Finch stated that prior to validation of the current written entrance exam, the bureau was unable to demonstrate that individual scores were indicative of potential job performance. One measure of validation of the current exam, therefore, was its use in measuring minimum qualifications rather than as a means to determine individual ranking of candidates.[10] The exam is capable of determining individual rankings, but it has not been used for that purpose. All candidates approved by the personnel board have been offered appointment as their names came to the top of the employment register. The practice of the personnel board has been to consider all eligible candidates. The register is permanent, with deletions only on account of placement or unwillingness of candidates to be hired.[11]

Prior to 1974, the number of approved candidates on the register was approximately the number of candidates needed to meet the bureau's need for new personnel. In February 1975, due to an increasing number of applicants and the lack of available positions, the bureau stopped accepting applications.[12]

Training for successful candidates (hired conditionally as "police trooper cadets") is conducted at the police academy in Frankfort. Because training has been curtailed, only replacement cadets have trained at the academy during the past 2 years. Based upon the bureau's attrition rate (3 percent) and the requested addition of 25 new positions, the bureau had tentatively scheduled an academy session for approximately 55 candidates in late 1978.[13] During the current budget-making process, the 25 positions requested for July 1, 1978, were deferred until July 1, 1979. Therefore, only replacements will be employed prior to that time.[14]

Obstacles to Eligibility of Minorities and Women

The Kentucky Bureau of State Police has received millions of dollars in Law Enforcement Assistance Administration funds in recent years (see exhibit 3). It is an affirmative obligation of all recipients of Federal funds, including LEAA funds, to ensure that all employee selection requirements are related to job performance. Tests, minimum height and weight requirements, oral interviews, and background checks are included. Unvalidated requirements that tend to disqualify a disproportionate number of minority individuals or women are specifically proscribed.[15]

Despite the clear underrepresentation of minority individuals and the absolute exclusion of women, only one of the bureau's selection or promotion procedures, the written entrance exam, has been validated for job relatedness.[16]

Written Tests

Written tests are part of both the selection and promotion criteria of the bureau. According to bureau personnel officer Lt. Taylor Little[17] and Lt. Col. Finch,[18] the written entrance test has been validated. Additionally, the written promotional exams are being validated by two private professionals under contract to the bureau. No target date, however, has been established for adoption of the validated tests.[19]

Physical Requirements

The unvalidated physical requirements, especially the specific height requirement, have had an effect on women applicants.[20] Two women filed charges in 1975 and 1976 with the Kentucky Commission on Human Rights alleging that the bureau discriminated against them by refusing to hire them because they failed to meet the height requirement (5′ 6″).[21]

After hearing the cases on February 24, 1977, the Kentucky Commission on Human Rights issued a decision in July 1977 that the 5′ 6″ height requirement imposed by the Kentucky State Police discriminates against women.[22] The Kentucky State Police appealed the decision to the Franklin Circuit Court where further action is pending.

Veterans Preference

While the Kentucky veterans preference statute regarding the Kentucky Bureau of State Police provides that, "*All other qualifications being equal*, preference shall be given to veterans...in time of war..."[23] (emphasis added), the personnel board has interpreted this law to mean that all eligible and successful veteran candidates be automatically placed on the employment register ahead of all successful nonveteran candidates. The rationale for the board's decision was that under the pass-fail policy of the bureau, all candidates, once placed on the employment register, were considered equally qualified, with the order of hiring determined solely by date of application for employment.[24] "All qualifications being equal," therefore, successful veteran candidates have been given absolute hiring preference.

The dual effects of the bureau's application of the veterans preference law and the unvalidated height requirement largely account for the fact that there has never been a woman among the sworn personnel of the bureau.

Historically, women were excluded from the military. From 1948 to 1967, women were prohibited from making up more than 2 percent of the total personnel in the armed forces, a limitation still imposed by regulation in the Army today. The consequence of these and other Federal military proscriptions is that few women will ever become veterans and thus qualify for a preference.[25]

The use of veterans preference has been widely regarded, both by State and Federal legislatures as well as courts of law, as a legitimate and rational exercise of authority. Justifications offered for veterans preference laws include the assumptions that: (1) the experience, discipline, and loyalty of veterans enhance performance of public duties; (2) it is a reward for service; and (3) it is an aid in rehabilitation and relocation of veterans whose lifestyles have been disrupted by military service.[26]

There is no dispute that the use of veterans preference is legally justifiable, particularly, as is the case with the bureau, where the preference is limited to those veterans who served in time of war. Where, however, as has been the case with the bureau, the application of the preference is such that the preference for veterans amounts to virtual exclusion of women, the constitutional issue of equal protection of the law is strongly presented. While there is ample case law upholding the validity of veterans preference statutes generally, there is little in the way of guidance from the courts as to the constitutionality of a preference law that is absolutely applied and consequently has the effect of virtually excluding women from employment.[27]

In the only case addressing this issue (factually similar to the bureau's application of the preference law), the court held that the application of the preference denied female applicants their constitutional right of equal protection of the law.[28] On appeal to the U.S. Supreme Court, the Court vacated the judgment and remanded the case to the lower court for determination of whether the State *intended* to discriminate against women in its application of the veterans preference law, indicating that the fact of discriminatory effect of the preference was not enough to void the law.[29] The constitutionality of the application of veterans preference laws similar to that of the bureau, therefore, remains unresolved at this time.

There are alternative methods of applying veterans preference that would avoid the virtual exclusion of women from employment opportunity. These alternative methods of applying veterans preference include: basing preference on length of service, basing preference on job-related skills gained, or limiting the time for exercising the preference. Application of these methods, according to a Federal district court, would not offend the Constitution.[30] Any such changes in Kentucky, of course, would require legislative action to amend the current law.

As devastating to potential female employees as the bureau's application of the veterans preference law has been in the past, two factors exist that will lessen its effect in the future.

The first factor is that the law limits the preference to those veterans who served honorably in time of war. Because of the current age limitation on applicants (between 21 and 30), the practical effect of the law limits the preference to veterans of the Vietnam conflict. Although the personnel board has not specifically delineated the duration of the conflict for purposes of applying the preference,[31] the pool of eligible veterans will soon dissipate.

The second factor involves the permanent employment register and the fact that no new applications have been accepted in the past 2 years. Previous bureau hiring has exhausted all the veterans on the register; only nonveterans remain. According to Lt. Col. Finch, the register will be exhausted prior to receipt of new applications.[32]

Despite the fact that the effect of the veterans preference law on female employment opportunity will dissipate in the near future, the fact remains that women have been excluded from employment as sworn personnel of the bureau largely through the application of the law, which has been, at best, of dubious constitutional validity.

Background Check

An applicant's background is checked to determine if he or she is of good character. Police officials talk with neighbors, relatives, and other acquaintances of the applicant. This subjective procedure has not been validated by the bureau to preclude the possibility of prejudice and partiality.

Personnel Board

As previously discussed, the personnel board approves all candidates before they are eligible for the employment register. Those who are disapproved by the board may not be placed on the register unless they are later approved upon a personal appeal to the board. This ostensibly equal treatment of all candidates by the personnel board, however, contrasts with the fact that few minority individuals and even fewer women have been eligible to appear before the board.

The personnel board has the statutory responsibility to ensure that all appointments made by the commissioner are based upon merit and fitness.[33] The board, then, has the ultimate responsibility to ensure that all applicants be judged on criteria rationally developed and designed under authority of the board solely to determine the applicant's ability to perform job-related tasks.

The lack of validated selection and promotion criteria and meaningful policy guidelines regarding the hiring and promotion of minority individuals and women, coupled with the actual statistical underrepresentation of blacks and exclusion of women, undermines any assurance that the personnel board is actively committed to equal employment opportunity.[34]

Promotions

By bureau regulation, a police trooper must serve a minimum of 3 years before promotion to senior police trooper and, by State law,[35] must serve a total of 5 years before becoming eligible for promotion to sergeant.

The senior trooper position is not designated by State law. Rather, the position was established by bureau regulation. According to Commissioner Brandenburgh, the written senior trooper qualifications require either 1 year of service as a trooper and 2 or more years of college or 3 years of service without the college requirement. Despite the written agency qualifications, however, the practice of the bureau has been such that there has never been any trooper elevated to senior trooper with less than either 3 years of service and 2 years of college or 5 years of service without the college requirement. This practice was established within the agency because of limited funds and because administrators have believed that all troopers should have a minimum of 3 years of service before being elevated to the senior trooper level.[36]

According to Commissioner Brandenburgh, none of the bureau's 21 minority members (all currently at the lowest level of rank; i.e., police trooper) have had enough time in grade to qualify for the rank of senior police trooper.[37]

Because the time-in-service restrictions for senior trooper are self-imposed by the bureau, they could be unilaterally reduced. This would facilitate advancement for all police troopers, including the 21 who are members of a minority group. In addition to its immediate effect, the reduction of time-in-service requirements would aid affirmative action efforts in the future. A feasibility study by the bureau could be conducted to address the issues of financial impact and appropriate level of minimum-service requirements.

Promotions from sergeant to lieutenant and from lieutenant to captain require that applicants complete at least 1 year of continuous service in the preceeding grade.

All promotions (through captain) are granted based on the applicant's performance on written and oral examinations and a personnel performance evaluation by "appropriate supervisory personnel," approved by the commissioner. The written test constitutes 50 percent, personnel evaluations 30 percent, and the oral examination 20 percent of the total score. Promotions are given to officers with the highest cumulative scores. In instances where the scores are the same, the promotion is given to the most-senior officer.

All positions above the rank of captain are deemed temporary positions, selected by, and serving at the pleasure of, the commissioner.[38]

Notes to Chapter 3

1. KRS 16.050(1).

2. KRS 16.050(3).

3. KRS 16.050(7).

4. Commonwealth of Kentucky, Department of Justice, Bureau of State Police, Computer Printout, Apr. 1, 1977.

In February 1978, a draft of this report was sent to the Kentucky Bureau of State Police for review. Included in the bureau's response was the recommendation that the following sentence be included in this portion of the report: "None had enough time in grade to qualify for the next highest rank of senior trooper." Letter from Kenneth E. Brandenburgh, Commissioner, Kentucky Bureau of State Police, to Bobby D. Doctor, Regional Director, Southern Regional Office, U.S. Commission on Civil Rights, Mar. 15, 1978 (hereafter referred to as Brandenburgh Letter). The recommended addition has been incorporated and noted in this report in chap. 3, "Qualifications for Officers."

Commissioner Brandenburgh's letter included two exhibits: Exhibit A is a summary of factual corrections to the draft report; exhibit B is a revised draft report with material recommended for deletion and for addition. The Mar. 15, 1978, letter of Commissioner Brandenburgh with attached exhibits are collectively referred to throughout this report as Brandeburgh Letter. The Brandenburgh letter (without exhibits) is included as an appendix to this report.
All undisputed factual corrections have been incorporated into the final report. Where there is a dispute as to facts listed in the draft report, the response of the bureau has been included in the final report through the use of footnotes. Differences of opinion on undisputed facts have largely been incorporated by footnotes also. In certain instances, differences of opinion have been reflected in the report to illustrate the difference while preserving the continuity and clarity of the report. In no instance has any response of Commissioner Brandenburgh been ignored.

5. KRS 16.040(3).

6. Ibid.

7. Commonwealth of Kentucky, Department of Justice, Bureau of State Police, "General Information for Trooper Applicants" (revised July 1, 1975), p. 2.

8. Commissioner Brandenburgh stated in his response that all applications are presented to the State police personnel board and that only the board may approve or disapprove an applicant. Brandenburgh Letter. It is assumed, however, that those candidates who fail the written examination are perfunctorily disapproved for employment by the board.

9. Telephone interview, Jan. 25, 1978 (hereafter cited as Finch Interview).

10. Ibid.

11. Ibid.

12. Ibid.

13. Ibid.

14. Brandenburgh Letter.

15. E.g., 29 C.F.R. Part 1607, "Guidelines on Employment Selection Procedures."

16. Lt. Taylor Little, personnel officer, Kentucky Bureau of Police, interview in Frankfort, Ky., Mar. 28, 1977 (hereafter cited as Little Interview). There is some question as to whether the bureau's promotional examination is in the process of being validated or has in fact been validated. At the time of the Advisory Committee study it was clear that the validation process had not been completed, although the bureau had begun the process. Commissioner Brandenburgh stated that, "This section on written tests is incorrect in that our written promotional examinations are validated and produced annually." However, on p. 15 of exhibit A attached to the Brandenburgh letter, the phrase, "written promotional exams *are being validated*" (emphasis added) was specifically recommended as an addition to the report. Because of the ambiguity raised in Commissioner Brandenburgh's response, the language of the report was not changed. The point of discussion in the report, however, is the need for a validated promotional examination, a point with which the bureau appears to be in agreement. Suffice it to say that the bureau either has a validated promotional examination or is committed to having one in the near future.

17. Ibid.

18. Finch Interview.

19. Little Interview. In his comments on this portion of the draft report, Commissioner Brandenburgh stated:

> The other steps of the promotional process are also established by statute and those component parts have also been related to a job task analysis of the different ranks and will be used in future promotional exams.

It remains unclear, however, when this entire process, including final adoption of the validated promotional examination, will actually be completed.

20. Commissioner Brandenburgh recommended that the word "contested" be used in referring to the unvalidated height requirement and that the phrase "has been alleged" be used in referring to the height requirement's adverse effect on women applicants. The facts, as stated in the report, are supported by the investigation of the Kentucky Advisory Committee and Commission staff and are specifically reinforced by the findings of the Kentucky Commission on Human Rights, as discussed in this section of the report.

21. Commissioner Brandenburgh stated in response to this portion of the draft report that "there has never been a female applicant rejected on the basis of the results of a physical examination. Physical examinations are conducted by private practitioners (MD's)." Apparently, there was confusion created by the use of the word "examination" in the draft report. This section of the report does not speak solely to medical examinations by medical doctors. Rather, it also speaks to other physical "qualifications" (e.g., height and physical training) for employment separate from the medical examination requirement. The report has been changed to reflect this distinction.

22. Pearson v. Department of Justice, Complaint Nos. 584–E, 662–E (Administrative decision, Kentucky Commission on Human Rights, findings of fact and conclusions of law issued July 28, 1977).

23. KRS 16.040(3).

24. Finch Interview.

25. See, Feeny v. Massachusetts, 12 EPD [CCH] §10,991, (U.S.D.C. Mass., issued Mar. 27, 1976).

26. 12 EPD [CCH] §10,991 (quoting from Feinerman v. Jones, 356 F. Supp. 252).

27. See, Feeny v. Massachusetts.

28. Feeny v. Massachusetts.

29. Massachusetts v. Feeney, 46 U.S.L.W. 3237 (U.S., Oct. 11, 1977), *vacating* and *remanding* to lower court for disposition in light of Washington v. Davis (426 U.S. 229) (1976).

30. Feeny v. Massachusetts.

31. Finch Interview.

32. Ibid.

33. KRS 16.050(7).

34. Commissioner Brandenburgh stated:

> We disagree with [this section] in regard to validated selection and promotional criteria. The Personnel Board has time and again indicated total commitment to equal employment opportunity for *all* candidates who meet minimum standards. However, they have also time and again indicated that they are very much opposed to quotas.

The process of validating the entire selection (and promotion) criteria of the bureau, which have been clearly demonstrated to have a disparate statistical impact upon women and minorities, has nothing to do with the use of "quotas."
Commissioner Brandenburgh recommended that the following language be inserted in the body of the report. Because the Kentucky Advisory Committee believes the following statement confused the issue of validation made in the report, it is set forth below solely to provide the bureau the opportunity to present its position and not as an endorsement of that position by the Advisory Committee:

> The State Police position on this issue, however, is that both that agency and the Personnel Board are fully committed to equal treatment for all applicants who meet minimum standards; but that they cannot legally have separate standards for minorities and women.

35. KRS 16.055(1)(a).

36. Brandenburgh Letter.

37. Ibid.

38. KRS 16.055.

Chapter 4

Affirmative Action in Kentucky Government

The Governor's Executive Order

The Governor of Kentucky established a revised affirmative action plan by executive order, on April 3, 1975.[1] The Governor's plan[2] was designed to include all State government agencies. Implementation of the plan was to be monitored by the commissioner of the State department of personnel.

In the introduction to the Commonwealth of Kentucky affirmative action plan, a brief definition of affirmative action is given as a guide to all State employers. It states that affirmative action is a comprehensive effort by an employer to:

> 1. Identify all barriers in the personnel management system which limit the ability of applicants and employees to reach their full employment potential without regard to race, color, religion, national origin, sex, age, or other extraneous factors;
>
> 2. Eliminate all such barriers in a timely, coordinated manner;
>
> 3. Undertake whatever special programs are needed to accelerate the process.[3]

The plan further states that: "Each Program Cabinet will develop its own extension of this Affirmative Action Plan which will include equal employment opportunity activities and programs unique to its operation."[4]

Kentucky Department of Justice and Bureau of State Police

In response to the requirements of the Governor's affirmative action plan, Secretary of Justice John L. Smith issued the department of justice's affirmative action plan on April 6, 1977.[5] The department's plan is similar to the Governor's in that it outlines in broad terms what the policy of the department is with regard to equal employment opportunity rather than giving specific details of existing procedures and proposed equal employment objectives. The department's plan sets forth program areas of assignment for equal employment opportunity coordinators in each bureau of the department for the stated purpose of making the "affirmative action plan workable and not just a paper tool."[6]

The broad policy and program objectives set forth in the Governor's and the department's plans require specific analysis and action by the bureau of State police in order to implement effective equal employment opportunity. A bare policy statement adopting the good intentions of an affirmative action plan, without individual agency analysis and application, renders the plan a "paper tool." In order to make an affirmative action plan "workable," the bureau must gather information necessary to make a detailed analysis of its policies, practices, and procedures relating to recruitment, selection, and promotion of minorities and women and detail, as necessary, specific steps that the bureau will take to achieve full and equal employment opportunities.

Such detailed analysis is also required of recipients of Law Enforcement Assistance Administration funds and must be illustrated by a written and definitive program prepared by the recipient in accordance with LEAA regulations (see discussion in chapter 5).

Despite the obvious intent of the Governor's and the department's affirmative action plans and the specific requirements of LEAA, the bureau of State police has not developed any meaningful program dealing specifically with equal employment opportunities in the bureau. In addition to the largely ignored problem of unvalidated recruitment, selection, and promotion procedures, the bureau has not developed or implemented any specific goals or timetables for overcoming the historical underrepresentation of minorities and the exclusion of women among sworn personnel of the bureau.[7]

Notes to Chapter 4

1. Commonwealth of Kentucky, Governor Julian Carroll, Executive Order 75–317, Apr. 3, 1975.

2. Commonwealth of Kentucky, *Equal Opportunity = Good Management,* Apr. 3, 1975; issued with EO 75–317.

3. Ibid., Introduction.

4. Ibid., p. 4.

5. Commonwealth of Kentucky, Department of Justice, "Affirmative Action Plan," Apr. 6, 1977.

6. Ibid., p. 8.

7. Commissioner Brandenburgh stated:

> [This] paragraph...is misleading to say the least. The Bureau of State Police adopted the State Equal Employment Opportunity Plan when it was first developed and later endorsed the Department of Justice Plan. It is our understanding that there is no requirement that an individual agency within State government develop a separate plan so long as the agency concerned accepts and abides by the Commonwealth EEO Plan.

As emphasized in this report, any affirmative action plan, in order to be effective, must include a written, detailed analysis of the individual agency's existing employment policies and practices; identify in writing where improvements are necessary; and set forth in detail the specific steps the agency will take to achieve full and equal employment opportunity. Neither the State nor the department of justice plan includes such an analysis of the Kentucky Bureau of State Police. Beyond the fact that the required analysis by the bureau is explicit in the State and department plans, this analysis is specifically required by each recipient of Law Enforcement Assistance Administration funds. The Kentucky Bureau of State Police has failed to meet this requirement.

In addition to the above, the commissioner recommended that the following language be inserted in the body of the report. The recommended language is included here to present the bureau's position and not as an endorsement of that position by the Kentucky Advisory Committee:

> The position of the Bureau of State Police on the foregoing paragraph is that they have adopted the Commonwealth of Kentucky Affirmative Action Plan and endorsed the Kentucky Department of Justice Plan and are in compliance. Furthermore, bureau officials state that both entrance and promotional examinations have been validated and that all other recruitment and promotional steps have been or are being validated. While it is possible that veteran's preference and a minimum height requirement may have adversely affected potential women applicants, these officials vehemently deny any past discriminatory practices against minorities.

Chapter 5

Federal Funding and Civil Rights Responsibility

U.S. Department of Justice, Law Enforcement Assistance Administration

The Federal Ominibus Crime Control and Safe Streets Act of 1968, as amended, created the Law Enforcement Assistance Administration (LEAA) and placed it within the U.S. Department of Justice.[1] LEAA's purpose is to "give large scale financial and technical aid to strengthen criminal justice at every level throughout the nation."[2]

Funding and Civil Rights Requirements

The LEAA distributes Federal funds to both private and public entities to further the mandates of the Safe Streets Act. In every State receiving LEAA assistance and where authorized by State law, a "State Planning Agency" (SPA) has been created to coordinate criminal justice planning statewide. In many instances, LEAA funds are distributed through the SPA to local law enforcement agencies. The SPA in Kentucky is the Executive Office of Staff Services, Kentucky Department of Justice.

The success of the Kentucky Bureau of State Police in securing LEAA funds is evidenced by the more than $2 million received during 1975 and 1976 (see exhibit 3).

All recipients of Federal funds are bound by the dictates of Federal law prohibiting discrimination in any program or activity receiving Federal financial assistance. The principal authority banning such discrimination is Title VI of the Civil Rights Act of 1964, as amended.[3] In addition, nondiscrimination language similar to that in Title VI is included in both the Safe Streets Act and the Juvenile Justice and Delinquency Prevention Act of 1974 administered by LEAA.

The civil rights requirements of Title VI and other relevant authority applicable to LEAA are not passive. Rather, a recipient of LEAA funds is required to illustrate not only that it will allow no prospective discrimination, but in addition, that it will take affirmative steps to eradicate the effect of past discriminatory actions. Discriminatory actions prohibited by LEAA regulations include discriminatory allocation or denial of services and benefits, as well as employment discrimination, on the basis of race, color, religion, national origin, or sex.[4]

With regard to equal employment opportunity, LEAA has issued guidelines to recipients dictating their responsibilities and setting forth procedures for assuring that recipients are actively demonstrating their commitment to equal employment opportunity.[5]

Recipients of LEAA funds are required to develop a written "Equal Employment Opportunity Program."[6] (EEOP)—i.e., "affirmative action plan"—and to certify that the EEOP complies with LEAA guidelines.[7] In addition, each recipient of an LEAA grant of $250,000 or more must provide LEAA with a copy of the written EEOP and any subsequent revision or supplement to it.[8] This requirement applies to the bureau of State police.

The LEAA guidelines call for the recipient agency to gather the factual information necessary to develop an effective EEOP. From the information gathered, the recipient must make a detailed analysis of its employment policies, practices, and procedures relating to minorities and women, and detail, as necessary, specific steps the recipients will take to achieve full and equal employment opportunities.[9]

LEAA regulations describe methods for review of recipient agencies to ensure that the recipients are in compliance with the relevant civil rights laws and regulations. One yardstick used by LEAA to determine whether to conduct a compliance review of a recipient agency is the relative disparity between the percentage of minorities, or women, in the relevant labor market and the percentage of minorities, or women, employed by the recipient.[10]

Because the Kentucky Bureau of State Police is a statewide agency, the "relevant labor market" is

the entire State of Kentucky. Blacks comprise 6.8 percent and women comprise 37 percent of the labor market of Kentucky.[11]

Ideally then, as a demonstrated commitment to equal employment opportunity, the bureau of State police sworn personnel would reflect the racial and sex composition of the labor market of the State of Kentucky. Far from the ideal, however, is the reality that employment statistics of the bureau disclose: an underrepresentation of blacks and no female representation.

Suspension of Funds

Pursuant to its statutory civil rights compliance responsibilities, LEAA regulations provide that, upon notice by a State administrative agency that there has been a pattern or practice of discrimination by a recipient of LEAA funds, LEAA will take the necessary steps, including suspension and termination of funds, to secure compliance.[12]

Accordingly, upon the finding of the Kentucky Commission on Human Rights that the bureau's height requirement discriminates against women, LEAA notified Governor Carroll on August 11, 1977, of the finding of discrimination within the bureau. LEAA further advised the Governor that the bureau had 90 days[13] in which to secure compliance with the law or face suspension of LEAA funds.[14] On November 15, 1977, the Governor was notified that all LEAA funds had been suspended.[15] In addition, the United States Attorney General (pursuant to LEAA regulation[16]) was given written notice of the suspension of LEAA funds.

LEAA regulations provide that a State government has 120 days from suspension of funds to request a hearing to determine if a recipient is in compliance or noncompliance with the law. Within 30 days of the requested hearing, or in the absence of a hearing, at the conclusion of the 120-day period, the Administrator of LEAA makes a final administrative determination of compliance or noncompliance.[17] On March 15, 1978 (119 days after the November 15, 1977, letter of suspension from LEAA), the Secretary of the Kentucky Department of Justice notified LEAA of a request for a hearing. The hearing was scheduled for May 2, 1978, in Frankfort, Kentucky, before a Federal administrative law judge.[18]

U.S. Department of Justice, Civil Rights Division

While the Law Enforcement Assistance Administration has the responsibility to ensure, through administrative procedure,[19] compliance with relevant civil rights laws, it has no power to compel compliance through judicial proceedings. Rather, the United States Attorney General has the responsibility to file suit to enforce compliance with the civil rights guarantees of the Ominibus Crime Control and Safe Streets Act of 1968, as amended.[20] This responsibility is assigned to the U.S. Department of Justice, Civil Rights Division.

The ultimate civil rights compliance authority of LEAA, therefore, is to terminate LEAA funds to a recipient and, if appropriate, seek repayment of funds.[21]

As already discussed, LEAA is currently in the final stages of terminating funds to the Kentucky Bureau of State Police. Should the bureau lose the hearing on the merits of the charge, LEAA funds to the bureau, currently under suspension, will be terminated.[22]

As important to asssuring civil rights compliance as LEAA's administrative responsibilities are, judicial proceedings by the Civil Rights Division may be necessary to correct any past and ongoing effects of violations of civil rights law. Accordingly, once LEAA makes a finding of noncompliance, LEAA notifies the Attorney General in order that he may institute a civil action.[23]

In addition to the authority under the Safe Streets Act, the U.S. Attorney General has the authority under other laws to bring suit against a public employer that discriminates in employment. Whether LEAA does in fact terminate funds to the Kentucky State Police, the Attorney General has the authority under Titles VI and VII of the Civil Rights Act of 1964 to bring suit against the State of Kentucky.[24]

The range of relief offered by a civil action is not limited to abating one instance or one type of prohibited discriminatory activity. Rather, the relief sought under the civil suit can be pervasive, requiring specific actions in a wide variety of areas to abate all discriminatory activity. In addition, relief can be sought to overcome all past effects of discriminatory treatment of minorities and women, e.g., imposition of hiring goals and timetables. In

suits of this type, the appropriate Federal district court will likely retain jurisdiction over all parties and facts to the suit in order to ensure ongoing compliance with the court's orders.

Notes : Chapter 5

1. 42 U.S.C. §3701 et seq.

2. U.S., Department of Justice, *The Law Enforcement Assistance Administration: A Program for a Safe, More Just America* (1970), p. 3.

3. 42 U.S.C. §2000d.

4. 28 C.F.R. Part 42, Subpart D, "Nondiscrimination in Federally Assisted Programs" (1977).

5. 28 C.F.R. Part 42, Subpart E, "Equal Employment Opportunity Guidelines" (1973).

6. 28 C.F.R. §42.304.

7. 28 C.F.R. §42.305.

8. 28 C.F.R. §42.207(b).

9. 28 C.F.R. §42.304.

10. 28 C.F.R. §42.206(b)(1).

11. Commonwealth of Kentucky, Department of Human Resources, *Total and NonWhite Population and Labor Force Data in Kentucky by County* (1975), p. 1.

12. 28 C.F.R. §42.210.

13. See 28 C.F.R. §42.212.

14. James M. H. Gregg, Acting Administrator, LEAA, letter to Governor Julian M. Carroll, Aug. 11, 1977.

15. James M. H. Gregg, Acting Administrator, LEAA, letter to Governor Julian M. Carroll, Nov. 15, 1977. Commissioner Brandenburgh stated in response to this portion of the draft report:

> The Governor responded to the Acting Administrator of LEAA in a letter dated November 8, 1977. LEAA suspended funds awarded to the Bureau without acknowledging receipt of the Governor's letter.

The Nov. 15, 1977, letter from Mr. Gregg to Governor Carroll reads in part:

> Inasmuch as there has been no evidence provided *that compliance has been obtained*, the statutory funds suspension must be implemented. (emphasis supplied)

16. 28 C.F.R. §42.212.

17. 28 C.F.R. §42.215.

18. Winifred Dunton, staff legal advisor, Office of Civil Rights Compliance, Law Enforcement Assistance Administration, telephone interview, Mar. 30, 1978. The results of the administrative hearing scheduled for May 2, 1978, were not available before this report was printed.

19. See generally, 28 C.F.R. Part 42.

20. 42 U.S.C. §3701 et seq.

21. 28 C.F.R. §42.215.

22. Ibid.

23. 28 C.F.R. §42.215(b)(1)(i).

24. Under Titles VI and VII of the Civil Rights Act of 1964, as amended, the U.S. Attorney General has the authority to bring suit against recipients of Federal funds that discriminate (e.g., in employment) in any program or activity receiving Federal financial assistance (Title VI); and against State and local governments that engage in a pattern or practice of employment discrimination (Title VII). Under Title VII, the jurisdiction of the U.S. Attorney General to bring suit is in no way contingent upon receipt of Federal funds by the public employer.

Chapter 6

Findings and Recommendation

Based upon the study of equal employment opportunities for minorities and women in the Kentucky Bureau of State Police (sworn personnel), the Kentucky Advisory Committee to the U.S. Commission on Civil Rights presents the following findings and recommendation for the consideration of the Commission.

Finding 1: Exclusion of Women

There has never been a woman employed among the sworn personnel of the Kentucky Bureau of State Police. Despite the mandates of Federal and State law that require equal employment opportunity without regard to sex (absent bona fide occupational qualifications based upon sex), the bureau has systematically denied employment to women. This exclusion of women has largely been perpetrated through the imposition of an arbitrary and unvalidated minimum height requirement. There was no evidence that the bureau recruits or encourages women who do meet the height requirement to apply. The Kentucky Commission on Human Rights, the State's civil rights enforcement agency, has determined that the bureau's height requirement imposes a discriminatory employment burden upon women. The bureau is in the process of appealing that decision.

Finding 2: Underrepresentation of Minorities

As of April 1, 1977, 97.8 percent of the bureau's total sworn force of 948 was white male. The 2.2 percent representation of minorities on the force is in contrast to the 6.8 percent representation of minorities in the State's labor force. Approximately 6.7 percent of the minority representation in the State's labor force is black; the balance is principally Spanish heritage and Native American persons. In actual numbers (as of April 1, 1977), the total minority representation on the force was 21 males (19 black, 2 Spanish surname). All 21 minorities on the force were at the lowest rank.

Finding 3: Lack of Demonstrated Equal Opportunity Commitment

The Kentucky Bureau of State Police has had ample, and recent, opportunity to overcome the historical exclusion of women and minorities from the bureau and to demonstrate a commitment to equal employment opportunity. In 1973 the bureau had neither a black nor a female among the sworn personnel of the bureau. One hundred and thirty-five State troopers were hired in the years 1974–75. Only 12 of the 135 were black; none were women.

Finding 4: Failure of Affirmative Action

Despite the mandates of affirmative action from no less than three sources (the Governor, Kentucky Department of Justice, and the U.S. Law Enforcement Assistance Administration) that require a written, detailed analysis by the bureau of its minority and female employment practices and a statement of specific steps to achieve full equal employment opportunities, the sum total of the bureau's affirmative action efforts, particularly in terms of demonstrated results, has been little more than a paper commitment to equal employment opportunity.

According to bureau officials, the bureau has made active efforts in the past toward minority recruitment and will develop a new process designed to attract female as well as minority candidates. In addition, the written entrance examination has been validated and the promotional exam is in the process of being validated. Commissioner Brandenburgh has stated also, in response to his review of the Advisory Committee report, that, "all...recruitment and promotion steps have been validated or are being validated." It is commendable that the bureau has made, or has committed itself to making, significant equal employment opportunity improvements that were not present when the Advisory Committee conducted its study. At the present time, however, there is no evidence that the bureau is not continuing to rely upon or

support several unvalidated selection procedures (e.g., physical requirements, personal interviews, and background checks) that have contributed in the past to the exclusion of women and likely to the underrepresentation of minorities. Furthermore, there is no indication when these procedures will actually be validated.

Whatever the degree of improvements that have been or will be made, the bureau has steadfastly refused, despite compelling justification, to adopt goals and timetables for obtaining meaningful representation of minorities and women among the sworn personnel.

Finding 5: Significant Future Gains Unlikely

The Advisory Committee finds that there is virtually no likelihood that employment of minorities and women by the bureau will increase significantly in the foreseeable future absent imposition of remedies to overcome the historical and continuing exclusion of women and underrepresentation of minorities. Even assuming that the bureau will eventually remove all obstacles to full equal employment opportunity, without imposition of goals and timetables to overcome past exclusionary practices meaningful minority and female representation is unforeseeable.

While the Kentucky Commission on Human Rights has ordered the bureau to develop goals and timetables for achieving and maintaining adequate female representation, the bureau has chosen to appeal the decision, and the ultimate realization of Federal, as well as State, guaranteed rights is in doubt. Additionally, the Kentucky commission's order does not address the issue of underrepresentation of minorities.

Finding 6: Law Enforcement Assistance Administration Civil Rights Compliance Responsibilities

The Law Enforcement Assistance Administration (LEAA) has provided millions of dollars in Federal funds to the Kentucky Bureau of State Police in recent years. Pursuant to its civil rights compliance responsibilities, LEAA suspended all LEAA funds awarded to the bureau. This action by LEAA was compelled by the finding of the Kentucky Commission on Human Rights that the bureau has engaged in an intentional practice of employment discrimination against women. The timely and responsive manner in which LEAA acted upon the finding of discrimination in violation of State law (paralleling Federal civil rights provisions) is commendable and is a welcome reassurance that civil rights compliance responsibilities are actively pursued and applied.

Finding 7: U.S. Department of Justice Civil Rights Compliance Responsibilities

Pursuant to its civil rights compliance responsibilities, LEAA has notified the United States Attorney General of its actions in the suspension of Federal funds to the bureau. As commendable as the administrative actions of LEAA are, it is the responsibility of the Attorney General to seek such judicial enforcement as required (including imposition of hiring goals and timetables and validation of all employment criteria) to ensure that a State agency is in full compliance with Federal laws that mandate equal employment opportunity.

Finding 8: Action by U.S. Department of Justice Required

The Kentucky Advisory Committee finds that action by the United States Attorney General through the judicial process is required to assure not only full equal employment opportunity for all minorities and women in the future, but also to provide the equitable remedies necessary to overcome the past effects of the bureau's exclusionary practices.

Recommendation

The Kentucky Advisory Committee recommends that the U.S. Commission on Civil Rights urge the United States Attorney General to exercise his authority to investigate the equal employment opportunities of the Kentucky Bureau of State Police, institute such legal proceedings as required to compel full compliance with the mandates of Federal civil rights law, and seek the remedies necessary to fully overcome the bureau's historical and continuous exclusion of women and underrepresentation of minorities.

Appendix

Letter from Commissioner Kenneth E. Brandenburgh, Kentucky Bureau of State Police

COMMONWEALTH OF KENTUCKY
KENTUCKY STATE POLICE
FRANKFORT 40601

OFFICE OF THE COMMISSIONER

March 15, 1978

Mr. Bobby D. Doctor, Regional Director
United States Commission on Civil Rights
Citizens Trust Company Bank Building
75 Piedmont Avenue, Room 362
Atlanta, Georgia 30303

Dear Mr. Doctor:

Thank you for the opportunity to respond to the draft report of the Kentucky Advisory Committee to the United States Commission on Civil Rights concerning the sex and race composition of sworn personnel within the Kentucky State Police. There are several factual inaccuracies in the draft, and I have taken the liberty to offer corrections. The noted inaccuracies are listed numerically and attached as Exhibit A. In Exhibit B, portions of Chapters III, IV, and V have been retyped with the material recommended for deletion enclosed in brackets and the suggested revisions added and underlined.

We are not categorically responding to the judgmental conclusions drawn in Chapters I and II of the draft report. Absence of such a response, however, should not be construed as my acceptance of their validity. I do believe that the State of Kentucky has made and continues to make considerable progress in equal employment opportunities for all and that the significance of this progress is lost in the simplistic analysis that is afforded in Chapter II.

As stated in the draft report, no applications for the cadet trooper position have been accepted since my appointment as Commissioner because of a pre-existing employment register. Prior to our resumption of the recruitment process, I have resolved that in a cooperative endeavor with the State Police Personnel Board we will review and perhaps revise some aspects of the previous process. In addition, the Kentucky Commission on Human Rights, the Kentucky Commission on Women, and other groups and individuals who have an interest in these issues will be invited to meet with us and to assist in our endeavors and commitment to equal employment opportunities for all qualified applicants. Information was available to the Committee regarding both the above mentioned plans and the wide ranging positive and fruitful minority recruitment program carried out by this agency during previous years. The Committee

apparently chose not to include this information in its draft, thereby bringing into question its conclusion as stated on page 22, that there is a lack of commitment by the agency and the Personnel Board to equal employment opportunity.

In conclusion, I am convinced that there has been no past discrimination by this agency against any applicant who met required standards and there will be none in the future. I believe that the Kentucky State Police has a unique opportunity to develop a recruitment process that will encourage the maximum number of minority and female applicants who meet the basic qualifications to submit applications for employment. This is an opportunity which I intend to pursue vigorously and in which I hope to be joined in a positive way by other individuals and agencies who share the commitment to equal employment opportunity for qualified applicants.

If you wish to discuss this response personally or by telephone, please let me know.

Sincerely,

Kenneth E. Brandenburgh
Commissioner

KEB/spm

cc: Governor Julian M. Carroll
Secretary John L. Smith, Department of Justice
Commissioner Addie D. Stokley, Department of Personnel
Kentucky State Police Personnel Board Members

Attachments

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